

FILED 10 DEC 7 15:04 USDC ORP

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

BRANDON R. SHELL,

Petitioner,

v.

J.E. THOMAS,

Respondent.

Civ. No. 10-1192-CL

**OPINION AND ORDER**

**PANNER, District Judge:**

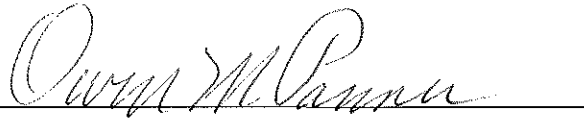
Magistrate Judge Mark D. Clarke filed a Report and Recommendation ("R & R") [#5], and the matter is now before this court. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b). Petitioner filed objections [#7] to the R & R. Accordingly, I have reviewed the file of this case *de novo*. See 28 U.S.C. § 636(b)(1)(c); McDonnell Douglas Corp. v. Commodore Bus. Mach.,

Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). I conclude the R & R is correct.

Magistrate Judge Clarke's Report and Recommendation [#5] is adopted. The petition [#2] is dismissed without prejudice. Petitioner's Motion for Appointment of Counsel [#3] and Application for Leave to Proceed *in forma pauperis* [#1] are DENIED as moot. Because petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability is DENIED. See 28 U.S.C. § 2253(C)(2).

IT IS SO ORDERED.

DATED this 7 day of December, 2010.

A handwritten signature in cursive script, reading "Owen M. Panner", is written over a horizontal line.

OWEN M. PANNER  
U.S. DISTRICT JUDGE